

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

BRADLEY HOUSE LDHA,

Plaintiff,
v.

Case Number 12-11633
Honorable Thomas L. Ludington

MARVIN ECHOLS,

Defendant.
_____ /

**ORDER ADOPTING REPORT AND RECOMMENDATION AND REMANDING THE
CASE TO THE 74TH JUDICIAL DISTRICT COURT**

This matter is before the Court on a report and recommendation (ECF No. 7) issued by Magistrate Judge Charles Binder on April 18, 2012. Judge Binder recommends remanding the case to the state court for lack of subject matter jurisdiction because the plaintiff's state court complaint relies exclusively on state law and state law claims cannot be recharacterized as federal claims for the purpose of removal. A case also may not be removed to federal court on the basis of a federal defense, even when both parties concede that the federal defense is the only real question at issue. The only federal claims in the instant case are those Defendant Margin Echols seeks to assert as either a defense to suit or as counterclaims, and he is in essence seeking an order from this Court rendering the state court judgment against him null and void. This Court has no power to overturn state court judgments.

As of today's date, no party has filed any objections to the magistrate judge's report and recommendation. The failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

Accordingly, it is **ORDERED** that Judge Binder's report and recommendation (ECF No. 7) is **ADOPTED**.

It is further **ORDERED** that the case is **REMANDED** to the 74th Judicial District Court.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: May 11, 2012

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means and on Marvin Echols, 100 15th Street, #B402, Bay City, Michigan 48708, by first class U.S. mail on May 11, 2012.

s/Tracy A. Jacobs
TRACY A. JACOBS